IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 14 of 2004

with

CIVIL APPLICATION No 447 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAD WOOLEN MILLS

Versus

M S VALTHA (H.U.F.)

Appearance:

1. Appeal from Order No. 14 of 2004

MR DAXESH T DAVE for Appellant No.

MR HARESH J TRIVEDI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/03/2005

ORAL JUDGEMENT

1. The appellant has preferred this appeal being aggrieved by the order dated 04/12/2003 passed by the learned Aux. Chamber Judge, City Civil Court, Ahmedabad in Civil Misc. Appeal No.527 of 2002, whereby the said application was rejected.

2. I have heard learned counsel for the parties and have perused the relevant documents on record. The trial Court has passed the impugned order on the same day on which the Advocate for the appellant had retired from the matter, and therefore, it is clear that the decree has been passed without hearing the present appellant or his Advocate. Before rejecting the said application, the learned Judge ought to have heard the appellant or his Advocate. This has not been done and therefore the impugned order of the trial Court is required to be quashed and set aside.

3. In the result, this appeal is allowed. The impugned order dated 04/12/2003 passed by the learned Aux. Chamber Judge, City Civil Court, Ahmedabad in Civil Misc. Appeal No.527 of 2002 is quashed and set aside. The amount which is already deposited by the appellant is directed to be invested in Fixed Deposit with a nationalized Bank for a period of one year. Since the suit in question is of the year 1997 the City Civil Court, Ahmedabad is directed to expedite the hearing of the suit in question and to dispose it of within a period of one year from the date of receipt of writ of this order. It is made clear that this Court has allowed this appeal only on the ground that the impugned order was passed on the same day on which the Advocate for the appellant had retired from the matter and the trial Court shall not be influenced by the observations made by this Court in this order and shall consider the matter on merits.

ORDER IN CIVIL APPLICATION

In view of the order passed in the main matter, the civil application will not survive. Hence, it stands disposed of. Rule is made absolute accordingly.

(K. S. Jhaveri, J.)

pravin/